

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
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February 23, 2004

Honorable Magalie Roman Salas
Office of the Secretary
Docket Room
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A, East
Washington, D.C. 20002

Re: Sound Energy Solutions, Docket No. CP04-58-000

Dear Ms. Salas:

Enclosed for filing in the above-docketed proceeding, please find an electronic filing of a document entitled **"NOTICE OF INTERVENTION AND PROTEST OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA."**

Thank you for your cooperation in this matter.

Sincerely,

/s/ Harvey Y. Morris

Harvey Y. Morris
Principal Counsel

HYM:mpg

Enclosure

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Sound Energy Solutions

Docket No. CP04-58-000

**NOTICE OF INTERVENTION AND PROTEST
OF THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

I. NOTICE OF INTERVENTION

Pursuant to Rules 211 and 214(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC”), and the February 2, 2004 Notice of Application, the Public Utilities Commission of the State of California (“CPUC”) hereby gives notice of its intervention¹ and protest of the application in the above-docketed proceeding.

The names and addresses of persons to whom communications should be addressed are:

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¹ The Notice of Application, page 3, stated that parties that had intervened in the pre-filing docket, PF03-06-000, such as the CPUC, need not refile motions to intervene in this docket. However, because the CPUC has additional comments that need to be filed, and all of the CPUC’s representatives were not listed on the service list, in an abundance of caution the CPUC renews its notice of intervention.

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The CPUC is a constitutionally established agency charged with the responsibility for regulating natural gas corporations within the State of California. In addition, the CPUC has a statutory mandate to represent the interests of natural gas consumers throughout California in proceedings before the FERC and no other party adequately represents those interests. California natural gas consumers would receive substantial service from the proposed liquefied natural gas (“LNG”) facilities in Long Beach, California sponsored by Sound Energy Solutions (“SES”), and such consumers have a direct interest in the outcome of this proceeding.

II. PROTEST

A. THE APPLICANT HAS NOT COMPLIED WITH CALIFORNIA STATE LAW REQUIRING CALIFORNIA PUBLIC UTILITIES TO APPLY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BEFORE COMMENCING CONSTRUCTION OF ITS LNG FACILITY

In Exhibit C to the Application, special counsel to SES presented its opinion that SES “has complied in all material respects with the applicable laws and regulations of the State of California that we have, in the exercise of customary professional diligence, recognized as applicable to the Company.” The CPUC respectfully disagrees that SES is

currently in compliance with California state laws, and informed SES of our position in an October 30, 2003 letter, set forth in Attachment A.

Under applicable California state law, SES is a California public utility. *See* California Public Utilities Code §§ 216, 221, 222, 227, 228. SES intends to utilize its proposed facility to process LNG into natural gas to be sold “in California’s non-core natural gas markets.”² Because its proposed operations and activities make SES a public utility, SES is required to apply for and receive a certificate of public convenience and necessity (“CPCN”) from the CPUC prior to commencement of construction of its proposed facility. California Public Utilities Code §§ 1001, *et seq.*

The CPUC informed SES on October 30, 2003 of the CPUC’s legal opinion that SES was a public utility under California law. The CPUC also notified SES that it would be necessary for it to apply for a CPCN in order to operate its proposed LNG facility legally. *See* Attachment A. Representatives of the CPUC and SES subsequently have met in person and spoken many times regarding the CPUC’s conclusion that SES is a California public utility.

The CPUC’s assertion of jurisdiction is not a determination on the merits of SES’s proposed LNG project at the Port of Long Beach. The CPUC has an open mind on the issues and will consider all of the parties’ positions in a hearing on SES’s application for the certificate of public convenience and necessity. However, just as other California natural gas utilities, such as Southern California Gas Company (SoCalGas) or recent

² SES’s Application For Authority to Site, Construct, and Operate LNG Import Terminal Facilities, pp. 4-6.

developers of other natural gas projects in California (i.e., Lodi and Wild Goose Storage facilities), must apply for and receive from the CPUC a certificate of public convenience and necessity before constructing natural gas plant in California, so too must SES.

The CPUC's protest of SES's current application is not intended in any way to suggest that the CPUC is opposed to LNG facilities in or near California. Indeed, in the CPUC's "Order Instituting Rulemaking to Establish Policies and Rules to Ensure Reliable, Long-Term Supplies of Natural Gas to California" in CPUC No. R.04-01-025 (filed January 22, 2004), the CPUC recognized that one of the ways to help ensure long-term supplies of natural gas to California is by providing access on the California intrastate pipelines to natural gas from LNG facilities. At the request of sponsors of proposed LNG projects along the West Coast, the CPUC set an expedited schedule for issues involving the access on intrastate pipelines to LNG supply, so that the CPUC could issue a decision by the summer of 2004 on some of the main access issues.³

The CPUC recognizes that Congress has deregulated the first sales of natural gas, including LNG, and has deemed that the importation of LNG is in the public interest. *See* 15 U.S.C. § 717b(b) and (c). Therefore, the CPUC's staff informed SES that the CPUC has no intention of regulating the price or importation of LNG. Instead, the CPUC staff identified the following potential areas of regulation of SES and its proposed LNG facilities with which the CPUC would be primarily concerned: the siting and safety of SES's proposed LNG facilities in California; and, in case of an emergency (i.e., a natural

³ In *Gas Daily* (January 27, 2004), pp. 9-10, there is a list of eight proposed LNG projects on the West Coast of California or Baja California, Mexico (either onshore or offshore). The sponsors of these projects have an interest in learning the CPUC's policies concerning their potential access to the intrastate pipelines in California under the CPUC's jurisdiction.

gas shortage in California), the need for natural gas to be transported to core residential customers or electric generation units (with just compensation to SES). The CPUC staff also stated that the CPUC is concerned about the potential exercise of market power by SES, as well as the transfer of ownership of LNG facilities or merger between SES and another entity (which could result in market power or affiliate abuse issues). The CPUC already regulates these subject areas, as well as many other subject areas, with regard to other natural gas utilities in California.

In light of the residential neighborhoods and businesses in the Cities of Long Beach and Los Angeles within approximately two miles of the proposed LNG facilities at the Port of Long Beach, the siting of SES's proposed LNG facilities present significant issues concerning the safety of California citizens and businesses. The CPUC is charged with the duty of ensuring the safe location and safety of the facilities of California utilities. *See* Cal. Pub. Util. Code §§ 761, 768, 1001, *et seq.* The CPUC also has certification from the United States Department of Transportation (DOT) under the Natural Gas Pipeline Safety Act (NGPSA), 49 U.S.C. § 60105. In the CPUC's General Order No 112-E, the CPUC has adopted the DOT's federal pipeline safety regulations, including the LNG safety regulations in 49 CFR Part 193. Therefore, it is clear that the CPUC has a significant role in this matter.

In addition, considering all of the adverse impacts on the California ratepayers, which have resulted from the California energy crisis, the potential exercise of market power is an area of concern for the State of California. The CPUC is charged with the duty of ensuring the California utilities do not engage in unjust, unreasonable, or

improper practices. *See* Cal. Pub. Util. Code § 761. As discussed below, there are several issues concerning the potential exercise of market power by SES.

There is a substantial state interest (notwithstanding the Port of Long Beach's role) with regards to these issues. The CPUC therefore protests the application on the basis that SES is mistaken that it has fully complied with California law.

B. FERC DOES NOT OCCUPY THE FIELD IN THE REGULATION OF NATURAL GAS COMPANIES OWNING OR OPERATING LNG FACILITIES

1. SES's Application Does Not Involve Sales or Transportation in Interstate Commerce

As SES's application filed herein (SES App.) establishes:

- SES's exact legal name is California LNG Project Corporation, which is a California corporation, and its headquarters and principal place of business is in California (SES App., p.3);
- SES's LNG facilities would be located in the Port of Long Beach, California (SES App., p.4);
- SES's LNG facilities would provide liquid fuel for LNG vehicles in the Los Angeles Basin (SES App., pp.4-6), and natural gas for markets in the Los Angeles Basin and Southern California (SES App., p.4);
- SES intends to negotiate long-term natural gas sales agreements with non-core customers in California (SES App., pp. 4-6); and
- In order to transport the natural gas from its proposed LNG facilities, SES has proposed an interconnection with SoCalGas' intrastate pipeline (SES App., p.5), which is a Hinshaw pipeline subject to the CPUC's jurisdiction and exempt from the FERC's jurisdiction. *See* 15 U.S.C. § 717(b) and (c).

The above-mentioned facts, as stated in SES's application, establish that SES's proposal does not involve interstate transportation or interstate sales of natural gas. SES's

proposed LNG facilities would not interconnect with an interstate pipeline. SES's sale of natural gas would be within the State of California, and the transportation of the natural gas would be on an intrastate pipeline (i.e., SoCalGas), which is regulated by the CPUC, not the FERC. Consequently, SES would not be a "natural-gas company," as that term is defined under the Natural Gas Act, because it is not engaged in the transportation of natural gas or sale for resale of such gas in interstate commerce. *See* 15 U.S.C. § 717a(6).⁴ Indeed, nowhere in its application does SES claim to be a natural-gas company subject to the FERC's broad jurisdiction.

By contrast, the CPUC does have jurisdiction over SES, as a gas corporation and pipeline corporation under Sections 222 and 228 of the California Public Utilities Code. We acknowledge that SES must file an application with the FERC or the Department of Energy (DOE) for authorization to import LNG. However, SES's import application must be approved without modification under Section 3(c) of the Natural Gas Act, 15 U.S.C. § 717b(c). It is unclear what basis the FERC would have to regulate the intrastate operations of SES's facilities in the State of California.

2. Section 3 of the Natural Gas Act Does Not Address the Siting, Construction or Operation of Facilities

SES has applied to the FERC, purportedly pursuant to Section 3 of the Natural Gas Act, 15 U.S.C. § 717b, for authority to site, construct, and operate LNG facilities at the Port of Long Beach. However, there is nothing in Section 3 of the Natural Gas Act

⁴ "Interstate commerce" is defined as commerce that crosses state lines, but only insofar as such commerce takes place within the United States. *See* 15 U.S.C. § 717a(7).

which expressly governs or addresses the siting, construction or operation of facilities. Instead, Section 3 only mentions FERC authorization over the application for “exportation” or “importation” of natural gas or LNG.⁵

Distinguishing between the FERC’s authorization over “foreign commerce” as opposed to “interstate commerce,” in *Border Pipe Line Co. v. FPC*, 171 F.2d 149, 151 (D.C. Cir. 1948), the Court held that Section 3 only addresses the fact of exportation or importation; it does not authorize regulation of facilities or other matters. The Court recognized that the FERC’s regulation of rates, practices, accounting, facilities and financing was concerning “natural-gas companies” engaged in “interstate commerce.” *Id.* at 150-151. The Court further acknowledged that certain companies engage in interstate and foreign commerce. However, in *Border Pipe Line*, as in the present case, there was no interstate commerce involved; the case involved foreign commerce and intrastate facilities located wholly within one state. Because *Border Pipe Line* involved only foreign commerce and “wholly local” operations (*id.* at 151), the Court set aside the FERC’s order, which had sought to control all of the activities. *Id.* at 152.

Border Pipe Line has never been overruled. In *Distrigas Corporation v. FPC*, 495 F.2d 1057 (D.C. Cir. 1974), which involved a significant volume of sales linked to interstate pipelines, the Court relied upon the FERC’s conditioning authority over imports, under Section 3 of the Natural Gas Act, as the basis for the FERC to regulate the

⁵ In sharp contrast to the lack of any reference in Section 3 to FERC authorization concerning facilities, there are specific provisions throughout Section 7 of the Natural Gas Act, 15 U.S.C. § 717f, which address the FERC’s jurisdiction over facilities of a natural-gas company. SES, however, did not apply for authorization pursuant to Section 7 of the Natural Gas Act.

LNG facilities. *Id.* at 1064. However, it is not clear that *Distrigas* has precedential value anymore. In the 1992 Energy Policy Act (EPAAct), Congress added subparts (b) and (c) to Section 3 of the Natural Gas Act, which, read together, stripped the FERC of the very conditioning authority which *Distrigas* relied upon to give FERC the ability to regulate LNG facilities. The FERC must now grant applications to import LNG without modification or delay. *See* 15 U.S.C. § 717b(b) and (c).⁶

In view of the above, there does not appear to be any statutory basis for the FERC to have jurisdiction over LNG facilities, especially in the present case where the proposed SES LNG facilities would not interconnect with an interstate pipeline subject to the FERC's jurisdiction. When the FERC reviews interstate pipelines' Section 7 certificate applications for the tap and valve facilities to interconnect with LNG facilities, the FERC may have authority to impose conditions addressing the LNG facilities. *See Henry v. FPC*, 513 F.2d 395, 403-406 (D.C.Cir. 1975). However, in the present case, SES's proposed LNG facilities would interconnect with an intrastate pipeline, which is subject to the CPUC's jurisdiction and not the FERC's jurisdiction. Therefore, *Henry v. FPC* would support the CPUC's jurisdiction to review SES's proposed LNG project, rather than the FERC's jurisdiction.

⁶ It should also be noted that *Distrigas* was not a case involving preemption, the siting or safety of LNG facilities, or the potential exercise of market power by the owner of LNG facilities. Indeed, *Distrigas* recognized that the purpose of the Natural Gas Act was "to protect consumers against exploitation at the hands of natural gas companies," and the FERC's regulation was to be "complementary to that reserved to the States." *Id.* at 1064. Therefore, it would hardly support preventing a state commission from protecting its citizens from the exercise of market power. Moreover, even when *Distrigas* clearly had precedential value (i.e., prior to the enactment of the EPAAct in 1992), in *Energy Terminal Services Corporation v. New York State Dept. of Environmental Conservation*, 1981 U. S. Dist. LEXIS 18415 (EDNY 1981), the Court held that the State of New York was not preempted under the Natural Gas Act from deciding the siting of LNG facilities.

3. It Is Essential that the CPUC Exercise Its Jurisdiction over SES and Its Proposed LNG Facilities in California

As stated above and provided in greater detail below, there are several siting, safety and potential market power issues involved in SES's proposed LNG project at the Port of Long Beach, California. To the extent that the record shows that SES's proposed LNG facilities may present a significant risk to the California citizens and businesses in the vicinity of the Port of Long Beach, appropriate safeguards must be imposed as conditions for authorization for SES's project or SES's proposed LNG project must be sited elsewhere. Similarly, to the extent that the record shows that SES would have the ability to exercise market power under certain circumstances (or that the merger between SES and another entity would result in that ability to exercise market power), there must be appropriate, mitigating safeguards imposed as conditions for authorization for SES's project (or regulatory authority over SES itself) to protect California citizens and businesses.

Notwithstanding that SES has filed with the FERC a Section 3 application for authorization to site, construct and operate SES's proposed LNG facilities, there is no guarantee that SES will submit to any and all conditions which the FERC may impose if the FERC approves the application. For example, if the FERC were to find that SES's proposed LNG facilities should not be sited at the Port of Long Beach, California and should be sited at a remote area away from the densely populated area around the Port of Long Beach, SES may refuse to adhere to that modification of its application. It is at least questionable that the FERC could reject SES's application or even modify it with any

conditions, given that Section 3(c) of the Natural Gas Act, 15 U.S.C. § 717b(c), explicitly states that applications for the importation of LNG shall be “granted without modification or delay.”⁷

In addition, SES in the future could disagree with the FERC’s interpretation of a condition, even if SES went forward with its project. Based upon its interpretation, SES could refuse to comply with the FERC’s subsequent order attempting to enforce the condition. Under these circumstances, it is not clear that the FERC would have authority to enforce its interpretation in light of the language of Section 3(c) of the Natural Gas Act. Moreover, to the extent that SES were to exercise market power in the future, the FERC may not be able to prevent it, because SES is not a natural-gas company under the definition in the Natural Gas Act.

For these reasons, it is essential that the CPUC exercise its jurisdiction in this matter. After SES has filed with the CPUC an application for a CPCN, the CPUC would be willing to work with the FERC to coordinate hearings in California, to the extent that the FERC plans to conduct hearings in this case. For example, in the 1970s, the last time when LNG facilities were proposed to be sited in California, the FERC and the CPUC jointly conducted concurrent evidentiary hearings in California on seismic issues involving the proposed Point Conception LNG site. *See Pacific Alaska LNG Co., et al.*, 15 FERC ¶ 61,087 (1981). Thus, there is precedent, as well as sound policy reasons, for

⁷ Of course, this language, which precludes modifications, only applies to the importation application and says nothing about siting, construction, or operations of LNG facilities. Indeed, there is no language at all in Section 3 of the Natural Gas Act which provides the FERC with authorization over such siting, construction or operations of LNG facilities.

the FERC and CPUC to attempt to cooperate with each other in exploring the issues involving SES's proposed LNG facilities at the Port of Long Beach, California.

C. ANY REVIEW OF PROPOSED LNG FACILITIES IN LONG BEACH MUST MEANINGFULLY EXAMINE ALL SAFETY FACTORS REQUIRED BY CONGRESS, INCLUDING POPULATION DENSITY, NATURAL PHYSICAL ASPECTS OF THE LOCATION, AND THE NEED TO SITE IN REMOTE AREAS

In the Pipeline Safety Act of 1979's amendments to the NGPSA, Congress mandated, among other things, safety standards, which consider the following six factors for the location of LNG facilities: "(1) kind and use of the facility; (2) existing and projected population and demographic characteristics of the location; (3) existing and proposed land use near the location; (4) natural physical aspects of the location; (5) medical, law enforcement, and fire prevention capabilities near the location that can cope with a risk caused by the facility; and (6) need to encourage remote siting." *See* 49 U.S.C. § 60103(a) (2003). Any review of proposed LNG facilities must take into account the factors listed by Congress. The present case involving SES's proposed LNG facilities at the Port of Long Beach, California raises significant issues, particularly with regard to three of these six factors.

1. Population and Demographic Characteristics of the Location

The proposed LNG facilities at the Port of Long Beach would be located in the City of Long Beach, California's fifth largest city. The proposed site would be within two miles of the downtown area of Long Beach, which houses the municipal buildings of

the city, convention centers, a federal building, and residential and commercial neighborhoods. Other residential neighborhoods are as close as 1.5 miles to the proposed site for the LNG facilities, and the closest elementary school would be 1.5 miles away. *See* Attachment B, “Affidavit of Wendy Maria Phelps,” for a description of the population and demographic characteristics of the area within two miles of the proposed LNG facilities.

A threshold question that needs to be addressed in reviewing the proposal is whether or not an LNG facility should be located in an area of high population density, and if so, how close to a highly populated area can an LNG facility be located, and what mitigation measures are required to diminish any dangers to the local population in the event of a catastrophe at the facility. In light of the possibility of an accident caused by human error or of a deliberate attack by terrorists, the questions concerning the safety of the citizens and businesses located in the vicinity of the proposed LNG facilities must be very carefully reviewed.

Indeed, the legislative history of the Pipeline Safety Act of 1979 makes clear that Congress required a high level of scrutiny of the safety risks when LNG facilities are located in densely populated areas. As Representative Dingell, one of the primary sponsors of the legislation, stated: “Clearly, the location of volatile LNG facilities in an area of high density must be very carefully analyzed.” *See* 125 Cong. Rec. H 24904 (September 17, 1979) (Statement of Rep. Dingell).⁸ On the day in which the House

⁸ Representatives Markey and Dingell were the two primary sponsors of the LNG safety standards provisions in the Pipeline Safety Act of 1979. *See* 125 Cong. Rec. H 24901 (September 17, 1979) (Statement of Rep. Markey); 125 Cong. Rec. H 24903 (September 17, 1979) (Statement of Rep. Johnson).

passed the Pipeline Safety Act of 1979, Representatives Murphy and Markey reaffirmed Representative Dingell's previous statement that "the location of LNG facilities in high dense urban areas must be carefully analyzed." *See* 125 Cong. Rec. H 32753 (November 15, 1979) (Statements of Reps. Murphy and Markey). Consequently, the safety risks associated with the siting of the proposed LNG facilities in the vicinity of the densely populated Cities of Long Beach and Los Angeles, California must be very thoroughly evaluated.

2. Natural Physical Aspects of the Location, Including Seismicity and Potential Liquefaction

The natural physical aspects of the proposed location must also be carefully examined, particularly given the seismicity of the area and the potential for liquefaction of the landfill at the Port.

According to SES in Section 6.3 of its Resource Report No. 6 attached to its application ("SES RR No.6"): "The LNG terminal site is located in a region of high seismic activity, which is concentrated to the northwest, north and southeast of the site." (SES RR No. 6, p. 6). As an example of a historical earthquake within about 21 km of the site, SES referred to the "1933 Long Beach earthquake, a magnitude 6.4 event generated by the Newport-Inglewood fault approximately 13 miles (21 km) from the site." *See* SES RR No.6, p.6.

In SES's Resource Report No.6, pp. 8-9, SES has identified "[o]nly those [earthquake] faults potentially having a significant contribution to the ground-motion hazard at the LNG terminal site," yet SES listed 27 faults in its Table 6-3, as follows:

Table II-1 Summary of Fault Parameters

Fault Name	Abbreviation	Type	M _{max} (M _w)	Distance mi (km)
THUMS-Huntington Beach	THUMS - HB	R-RL	7.0	1.4 (2.2)
Palos Verdes – PV & San Pedro Shelf Segments	PVF	RL-R	7.0-7.4	2.5 (4)
Newport-Inglewood – Onshore	NIF	RL	7.0-7.2	4.4 (7)
Palos Verdes-Santa Monica Bay	PVF-SMB	RL	6.6	11.3 (18)
Puente Hills Thrust—Santa Fe Springs & Coyote Hills segments	PHT-SFS CH	R	7.1	10.6 (17)
Puente Hills Thrust—Los Angeles segment	PHT-LA	R	6.9	15 (24)
Elysian Park Thrust	EPT	R	6.6	18.1 (29)
Newport-Inglewood – Offshore	NIOF	RL	7.0	21.9 (35)
Santa Monica	SantaMon	LL-RO	6.6	23.8 (38)
Whittier-Elsinore-Whittier segment	WEWhittier	RL	6.9	19.4 (31)
Hollywood	Hollywd	LL-RO	6.6	24.4 (39)
Raymond	Raymond	LL-RO	6.5	25 (40)
Verdugo	Verdugo	R	6.7	26.3 (42)
Sierra Madre	SierraMa	R	7.4	30 (48)
Northridge	Northrdg	R	6.9	35 (56)
San Fernando	SanFern	R	6.7	35.6 (57)
Cucamonga	Cucamong	R	7.0	36.3 (58)
Whittier-Elsinore-Glen Ivy segment	WEglenIvy	RL	6.9	38.1 (61)
Santa Susana	SantaSus	R	6.8	40.6 (65)
Whittier-Elsinore-Temecula segment	WETemecula	RL	7.0	46.9 (75)
San Andreas-Mojave segment	SAMojave	RL	7.5	50.6 (81)
San Jacinto-San Bernardino segment	SJSanBer	RL	6.75	52.5 (84)
San Andreas-San Bernardino segment	SASanBer	RL	7.25	54.4 (87)
San Jacinto-San Jacinto segment	SJ SanJac	RL	7.0	56.3 (90)
San Jacinto-Anza segment	SJAnza	RL	7.4	74.4 (119)
San Andreas-Coachella Valley segment	SACoache	RL	7.5	100 (160)
San Andreas-Carrizo segment	SACarriz	RL	7.75	106.3 (170)

SES further recognized in its Resource Report No.6 that there was a significant risk of liquefaction at its proposed site for its LNG facilities at the Port of Long Beach.

As SES stated in this Resource Report:

According to the Maps of Seismic Hazard Zones prepared by the California Department of Conservation, Division of Mines and Geology (now known as the California Geological Survey), the Project, including the pipeline and electric distribution line routes, is located within a liquefaction hazard zone (CDMG, 1998).

The combination of high seismicity, shallow groundwater conditions and weak hydraulic fills with predominantly sandy and silty soils result in a significant potential for liquefaction at the LNG terminal site. Liquefaction-induced hazards at the site include post-earthquake settlements in the hydraulic fill area, and shaking-induced lateral deformations and potential

instability of the existing waterfront structures (Appendix 6-1, URS, 2003b).

See SES RR No.6, p. 11.

In view of the high seismic activity in this area and the significant potential for liquefaction at the Port of Long Beach, SES has proposed certain design and mitigation measures. In reviewing SES's proposal in this regard, the following questions, among others, need to be addressed:

- Will the measures that SES has proposed to solidify the foundation be sufficient in the event of a major earthquake and subsequent liquefaction of the ground? What is the confidence interval associated with that assessment?
- Have these techniques to solidify the foundation ever been put to the test in real world circumstances? If so, what were the outcomes?
- Even in cases of non-critical failure, such as pipeline rupture, how long would it take to make the LNG facility's systems functional again? What are best and worst case scenarios for earthquake-related supply disruption?

3. Need to Encourage Remote Siting

In promulgating the 1979 amendments to the NGPSA, Congress also listed as the sixth factor for safety standards for the location of LNG facilities the "need to encourage remote siting." *See* 49 U.S.C. § 60103(a) (2003). The legislative history of these amendments makes clear that Congress intended that these standards "would require remote siting to the maximum extent possible." 125 Cong. Rec. H 24901 (September 17, 1979) (Statement of Rep. Markey). Any review of the SES proposal thus must consider whether the site has been located remotely "to the maximum extent possible."

The application itself states that “[s]ince SES did not identify any significant environmental or technological advantage with offshore technologies or any significant environmental issues with the proposed onshore site, no offshore technologies or sites were evaluated” as part of SES’s process of choosing the Long Beach site. SES App., Vol. III, Resource Report No. 10, p. 42.

One question which must be reviewed is why a more remote onshore location could not be used. A further question is whether or not offshore sites should be evaluated as alternatives to the SES project. The Application identifies two proposed offshore projects in Southern California, the BHP Billiton proposal near Cabrillo Port, and the Crystal Energy proposal on Platform Grace offshore of Oxnard. Whether or not such offshore projects are potential alternatives to the SES proposal should be part of any review. Both offshore projects have recently filed applications to the Coast Guard for authority to construct and operate offshore LNG facilities.

D. THE PROPOSED LNG FACILITIES RAISE MARKET POWER ISSUES FOR THE SOUTHERN CALIFORNIA GAS MARKET

An additional issue that needs to be examined is whether the proposed LNG facility would give SES considerable market power in the southern California market for natural gas. The SES Project would provide an average of 600 MMcf/d of output into the SoCalGas intrastate pipeline system, about ten percent of California’s daily needs, and approximately twenty percent of the needs of the Southern California gas market. The maximum output of the SES facility is 1 bcf/d. The FERC’s own Market Oversight and

Enforcement Section (“MOE”) recently commented with respect to the Southern California gas market that “even small amounts of unused capacity can affect prices during periods of supply-demand imbalance.” MOE Comments, FERC Docket No. RP00-241, October 31, 2001, p. 4.

In view of the above, it must be determined whether, as an operator of an LNG facility in Southern California, SES could affect prices through the exercise of market power. Market power is the power to control prices or to exclude competition. *See United States v. E.I. Du Pont de Nemours & Co.*, 341 U.S. 377, 391 (1956). Restricted output and supracompetitive prices can provide direct evidence of the exercise of market power. *See Rebel Oil Co. v. Atlantic Richfield Co.*, 51 F.3d 1421, 1434 (9th Cir.), *cert. denied*, 516 U.S. 987 (1995). Because the SES LNG facility output will not be traveling in the far larger interstate transportation market, but rather in the smaller, intrastate Southern California transportation market, market power concerns are far greater for SES than for LNG facilities supplying interstate markets.

Related to this issue is the potential for SES to merge with or acquire other energy interests in California, thereby increasing its potential ability to unlawfully exercise market power. These market power issues need to be addressed in a hearing.

III. CONCLUSION

In order for SES to comply with state law, the CPUC must conduct its own proceeding to consider the public convenience and necessity of SES’s proposal to construct LNG facilities at the Port of Long Beach. For the reasons set forth above, it appears that the FERC does not possess sufficient authority to require conditions as part

of any approval of SES's project, nor retains jurisdiction over the continuing operations of SES as a "natural-gas company" under the Natural Gas Act because the gas never travels in interstate commerce. If the FERC intends to conduct hearings, the CPUC is willing to work with the FERC to review the proposal, and, as occurred in the review of the proposed LNG facility at Point Conception in the late 1970's, offers to hold joint hearings with the FERC on seismic and other issues pertaining to the project.

Any review of the proposal must be undertaken in conformance with California law, as well as Congressional mandates on siting and safety, and take into account the numerous alternative proposed LNG projects for California and Baja California.

Respectfully submitted,

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By: /s/ HARVEY Y. MORRIS

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February 23, 2004

Attorneys for the Public Utilities
Commission of the State of California

ATTACHMENT A

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



October 30, 2003

Thomas E. Giles, Executive Vice President
Sound Energy Solutions
301 Ocean Boulevard, Suite 1510
Long Beach, CA 90802

Subject: Sound Energy Solutions- Port of Long Beach LNG Receiving Terminal Proposal

Dear Mr. Giles,

This letter officially informs you that the California Public Utilities Commission ("CPUC") has voted to assert its jurisdiction over Sound Energy Solutions ("SES") as a "public utility" pursuant to Public Utilities Code Sections 216, 221 and 222 and relevant case law. As a public utility, SES must apply to the CPUC for a Certificate of Public Convenience and Necessity ("CPCN") pursuant to Public Utilities Code Sections 1001, et al., before commencing construction of its proposed LNG Receiving Terminal located at the Port of Long Beach.

In 2002, California used about 6 Bcf/day of natural gas and more than 80% (about 5 Bcf/day) came from natural gas utilities regulated by the CPUC. The CPUC has regulatory authority over the operation of California natural gas utilities to ensure the adequacy of natural gas supply at reasonable prices. It is from this statewide perspective that we will engage in our review of the proposed LNG Receiving Terminal and our regulation of SES.

We acknowledge the responsibilities of the Port of Long Beach as the lead agency under the California Environmental Quality Act ("CEQA") and will participate as a responsible agency for CEQA purposes.

We recognize that the Commission's review of the application will be subject to the provisions of the Permit Streamlining Act. We look forward to working with you to produce a timely decision on this important project.

The CPUC is interested in meeting with representatives from SES as soon as possible to discuss this matter. Please contact Arocles Aguilar, Assistant General Counsel, at (415) 703-2969 to schedule a meeting and to direct any general questions or concerns you might have.

Sincerely,

A handwritten signature in cursive script, appearing to read "William Ahern".

William Ahern
Executive Director

ATTACHMENT B

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Sound Energy Solutions

Docket No. CP04-58-000

State of California

)

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ss:

County of San Francisco

)

AFFIDAVIT OF WENDY MARIA PHELPS

I, WENDY MARIA PHELPS, declare as follows:

1. I am employed by the California Public Utilities Commission (CPUC) as a Utilities Engineer in the CPUC's Energy Division. I have personal knowledge of the facts stated herein except as to matters stated upon information and belief, and as to those matters, I believe them to be true. If called upon to testify, I could and would competently do so. I make this Declaration in support of the CPUC's Notice of Intervention and Protest.

2. I am assigned as a Utilities Engineer in the Natural Gas section of the Natural Gas, Energy Efficiency, & Resource Advisory Branch of the CPUC. This branch provides technical assistance to the CPUC's Administrative Law Judges in formal proceedings, prepares analyses and research to support the Commissioners and their staff of advisors, and prepares resolutions for the CPUC to consider in response to informal advice letter

tariff filings by the utilities. I have held this or similar positions in the Energy Division as a Utilities Engineer for over 2 ½ years. Beginning in 2003, I have been assigned to the Natural Gas section and have been the staff person primarily assigned to provide support for the CPUC's role in FERC natural gas proceedings.

3. In my position I personally review advice letters and prepare draft resolutions, review utility reports and other requests and filings, assist in coordinating workshops, and review draft and final CPUC decisions relating to natural gas issues. In addition, I am the Energy Division staff person principally assigned to natural gas FERC matters in which the CPUC participates. I am thus broadly familiar from my day-to-day responsibilities with natural gas issues affecting California. I am also a member of the State of California Liquefied Natural Gas (LNG) Interagency Working Group. This group meets regularly to become educated about the various West Coast proposed LNG projects and to address LNG regulatory and technical issues. In particular, my work assignments have included review of safety issues for the proposed Sound Energy Solutions (SES) Port of Long Beach (POLB) LNG facilities.

4. One of the safety issues with which I have been involved concerns siting of the proposed LNG facilities. I have become knowledgeable about the population and demographics of the nearby Cities of Long Beach and Los Angeles. Generalized land use within two miles of the proposed site includes not only harbor port related (i.e. Ports of Los Angeles and Long Beach) and industrial uses but also mixed uses (non-industrial) and open space/parks (See SES App., Figure 8-1). Specifically, the demographic zoning characteristics within two miles of the proposed LNG facilities include medium to high

density residential uses. I obtained this demographic zoning information on-line from Southern California Association of Governments (SCAG) website at www.scag.ca.gov using the following links: a) Data & Maps (left side); b) SCAG Interactive Atlas (bottom); c) Go To SCAG Interactive Atlas (bottom); d) Map: Landuse – 2000 Land Use; e) Zoom in to Level 8; f) Pan Port of Long Beach (POLB) into middle of screen; g) Zoom in to Level 7; h) Pan POLB into middle of screen; i) Zoom in to Level 6; j) Pan POLB into middle of screen; k) Zoom in to Level 5.

5. There are residential neighborhoods in the Cities of Long Beach and Los Angeles approximately two miles from the proposed LNG facilities. There is an elementary school (Edison Elementary School) located at 625 Maine Avenue in Long Beach with an enrollment of 960 students (see <http://www.lbusd.k12.ca.us/edison/index.htm>) within two miles from the proposed LNG facilities, and a private elementary school (St. James School) located at 250 W. 3rd Street in Long Beach less than two miles from the proposed LNG facilities. There also is a chartered middle school (Constellation Community Middle School) located at 501 Pine Avenue in Long Beach approximately two miles from the proposed LNG facilities. I obtained the names and addresses of these three schools from page 795 of the latest edition of the Thomas Guide Digital Edition (CD ROM), Los Angeles & Orange Counties 2004.

6. There is a residential neighborhood approximately one and-a-half miles from the proposed LNG facilities. I have learned through phone conversations between myself and representatives at both Long Beach Unified School District and City of Long Beach Planning Department in February 2004 that there is a new elementary school under

construction, located at W. Broadway and Golden Avenue, in Long Beach with a planned opening date of September 2004, approximately one-and-a-half miles from the proposed LNG facilities. I estimated the distances between the residential neighborhoods, the schools and the proposed LNG facilities using both a Rand McNally Long Beach 2004 map and street guide detail maps (pages 795 and 825) of the Thomas Guide, Los Angeles & Orange Counties 2004 (hardback copy).


7. There are growing residential and commercial neighborhoods in downtown Long Beach within two miles of the proposed LNG facilities. The public buildings in downtown Long Beach within approximately two miles of the proposed LNG facilities include the Long Beach Federal Building, Long Beach City Hall, Police Station, Fire Station, Long Beach Municipal Courthouse, Long Beach Library and California State University Chancellor's Office. I obtained the names of these public buildings, except for the Long Beach Federal Building, from page 825 of the latest edition of the Thomas Guide Digital Edition (CD ROM), Los Angeles & Orange Counties 2004. I obtained the name and location of the Long Beach Federal Building, Glenn M. Anderson Federal Building, located at 501 W. Ocean Blvd. from the U.S. General Services Administration's website at <http://www.iolp.gsa.gov/iolp/BuildingInfo.asp?bID=CA0273>. I estimated the distances between all of these neighborhoods, buildings and the proposed LNG facilities using both a Rand McNally Long Beach 2004 map and street guide detail maps (page 825) of the Thomas Guide, Los Angeles & Orange Counties 2004 (hardback copy).

8. The main transportation corridors near the Port of Long Beach site include: a) Ocean Boulevard which as of 2001 had a traffic count of 53,400 vehicles per day (which I learned through phone conversation between myself and an engineering aide from City of Long Beach Department of Public Works in February 2004) and is less than a half-mile from the proposed LNG facilities; b) Terminal Island Freeway or Highway 47 which is less than one mile from the proposed LNG facilities; and c) Interstate 710 which is less than one-and-a-half miles from the proposed LNG facilities. These freeways and arterial streets in the proposed project area are shown in SES Application, Figure 5-3 (Not to Scale). The estimated distances were calculated using SES App., Figure 1-10, Project Location USGS Map and a Rand McNally Long Beach 2004 map.

9. Some examples of recreation and tourist attractions within two miles of the proposed LNG facilities are: a) Queen Mary; b) Catalina Cruise Lines; c) Shoreline Village (waterfront stores); d) Downtown Long Beach Marina; e) Aquarium of the Pacific; and f) multiple hotels and restaurants (i.e. Sheraton, Long Beach Hilton, Hyatt Regency and Renaissance Long Beach Hotel). I obtained these estimated distances from page 825 of the Thomas Guide (both hardcopy and CD-ROM Digital Edition), Los Angeles & Orange Counties 2004 and a Rand McNally Long Beach 2004 map.

I affirm that the foregoing is true and correct.

Executed this 23rd day of February 2004, at San Francisco, California.


Wendy Maria Phelps

Subscribed to and acknowledged before
me this 23rd day of February, 2004



Cindy I. Philapil
Notary Public in and for the
City and County of San Francisco
State of California

My Commission expires: 12/17/08



CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document upon all known parties of record by mailing first-class a copy thereof properly addressed to each party.

Dated at San Francisco, California, this 23rd day of February 2004.

/s/ HARVEY Y. MORRIS

HARVEY Y. MORRIS